

WHEN RECORDED RETURN TO:

Ivory Development, LLC  
Christopher P. Gamvroulas  
978 East Woodoak Lane  
Salt Lake City, Utah 84117  
(801) 747-7440

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
MONTEBELLA SUBDIVISION,**

This Declaration of Covenants, Conditions, and Restrictions for MONTEBELLA Subdivision (the "Declaration") is made and executed by Ivory Development, LLC, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Developer").

**RECITALS**

- A. The Property is an area featuring unique and distinctive terrain;
- B. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Developer to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.
- C. This Declaration affects that certain real property located in the City of Kaysville in Davis County, Utah described with particularity in Article II below (the "Property").
- D. Developer is the owner of the Property.
- E. Developer has constructed or is in the process of constructing upon the Property a residential subdivision which shall include certain Lots, landscape easements, and other improvements of a less significant nature. The construction will be completed in accordance with the plans contained in the Final Plat to be recorded concurrently herewith.
- F. Developer intends to sell to various purchasers the fee title to the individual residential Lots contained in the Property, together with an appurtenant ownership interest in the Association, subject to the Project Documents.
- G. The Project is to be known as "MONTEBELLA."
- H. Developer desires, by filing this Declaration and Final Plat, to submit the Property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth in the Project Documents.

PARCEL NO'S. 08-448-0001 THROUGH 08-448-0027

I. Since the completion of MONTEBELLA may be in phases, the completed MONTEBELLA will consist of the original phase and all subsequent phases.

## COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Developer hereby makes the following declaration:

### I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1.1 The term Accessory Building shall mean and refer to any structure which is not the preliminary structure, containing at least one hundred and twenty (120) square feet, requires a building permit, and is considered by the Architectural Review Committee as an "accessory building". No shed, shack or other outbuilding or structure for which a building permit is not required shall be considered an "accessory building".

1.2 The term Addition shall mean a Capital Improvement.

1.3 The term Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

1.4 The term Architectural Review Committee shall mean the person or persons appointed to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within MONTEBELLA (the "ARC").

1.5 The term Area of Common Responsibility shall mean and refer to the area which the Association is responsible to maintain, repair, replace, administer and regulate.

1.6 The term Area of Personal Responsibility shall mean and refer to the area which the Owner is responsible to maintain, repair and replace.

1.7 The term Articles of Incorporation shall mean and refer to the Articles of Incorporation of MONTEBELLA Association on file or to be filed with the Utah Department of Commerce.

1.8 The term Assessment shall mean and refer to any amount imposed upon, assessed or charged an Owner or Permittee.

1.9 The term Association shall mean and refer to the association of Owners at MONTEBELLA taken or acting as a group in accordance with this Declaration.

1.10 The term Builder shall mean an owner, developer or contractor who obtains a construction or occupancy permit for one or more Lots.

1.11 The term Building shall mean and refer to any of the structures constructed in the Property.

1.12 The term Bylaws shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto, marked Exhibit "B," and incorporated herein by this reference.

1.13 The term Capital Improvement shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

1.14 The term City shall mean and refer to the City of Kaysville in Davis County, Utah.

1.15 The term Common Elements shall mean and refer to all landscape and other easements and rights of way within the Subdivision as shown on the Final Plat, including the TREX/Masonry Wall.

1.16 The term Common Expense shall mean and refer to:

1.16.1 All sums lawfully assessed against the Owners;

1.16.2 Expenses allocated by the Association among the Owners;

1.16.3 Expenses agreed upon as common expenses by the Association; and

1.16.4 Expenses declared common expenses by this Declaration.

1.17 The term Community shall mean and refer to MONTEBELLA.

1.18 The term Community Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in MONTEBELLA, as determined by the Management Committee from time to time.

1.19 The term Covenant to Share Costs shall mean and refer to any contract, agreement, declaration of easements, licenses and/or covenant to share costs executed by the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Association subject to such Covenant to Share Costs, and/or which obligates the Association to share the costs of maintaining certain real, personal or mixed property described therein.

1.20 The term Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for MONTEBELLA.

1.21 The term Dedicated Streets shall mean and refer to those public streets and cul-de-sacs within MONTEBELLA formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.22 The term Design Guidelines shall mean and refer to the architectural and design requirements set forth in Exhibit "C" attached hereto and incorporated herein by this reference, which are subject to change.

1.23 The term Developer shall mean and include Ivory Development, LLC and any person or persons who might acquire title from it to all or some of the unsold Lots or Lots through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Lots, in a sale in the nature of a bulk sale. The person acquiring any of such property from the Developer shall be considered a Developer with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Developer and by its successor in interest as the new Developer.

1.24 The term Developmental Rights shall mean and refer to the right granted hereunder to the Developer, its agents, representatives, employees, successors and assigns, to develop and improve the Property.

1.25 The term Drainage Easement shall mean and refer to the drainage easement(s) as shown on the Final Plat.

1.26 The term Eligible Guarantor shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Declaration.

1.27 The term Eligible Insurer shall mean and refer to an insurer of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

1.28 The term Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

1.29 The term Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Management Committee. A vote which is for any reason suspended is not an "eligible vote".

1.30 The term Entry Easement shall mean and refer to the approximately 15 foot entryway easement to the Subdivision on the land directly across from Lot 27 and Rigby Road as shown on the Final Plat.

1.31 The term Final Plat shall mean and refer to the Final Plat for MONTEBELLA as approved by the City and on file in the Office of the County Recorder.

1.32 The term Flood Plane shall mean and refer to the existing 100 year flood plane as shown on the Final Plat, which affects Lots 1-6, inclusive.

1.33 The term Guest shall mean and refer to a family member, guest, invitee, or licensee, of an Owner or Lot.

1.34 The term Home shall mean and refer to a home constructed upon a Lot which may also be known as a residence, dwelling or living unit.

1.35 The term Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

1.36 The term Individual Charge shall mean and refer to a charge levied against an Owner, Guest or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment.

1.36.1 The act or negligence of any Guest or Permittee shall be deemed to be the act or negligence of the Owner responsible for such Person.

1.36.2 Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner, Guest or Permittee including:

1.36.2.1 The cost to repair any damage to any portion of the Property on account of loss or damage caused by such Person; or

1.36.2.2 The cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Project Documents; and

While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Association also shall have all other remedies, both legal and equitable, described in the Project Documents available against any Owner for nonpayment.

1.37 The term Land shall mean and refer to all of the real property subject to the Declaration.

1.38 The term Landscaping shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Property, as well as the appurtenant sprinkling and irrigation systems.

1.39 The term Lender shall mean and refer to a Mortgagee.

1.40 The term Lot shall mean and refer to a separate physical part of the Property intended for independent use as shown on the Final Plat. Each Lot shall be assigned a separate "parcel" or tax identification number by the appropriate governmental agency. If the context requires, the term "Lot" shall include the Home constructed thereon.

1.41 The term Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

1.42 The term Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

1.43 The term Management Committee shall mean and refer to the governing board elected or appointed to direct the affairs of the Association. The Management Committee may also be known as the Board of Directors.

1.44 The term Manager shall mean and refer to the professional person appointed or hired by the Association to manage and operate the Property, and assist in the administration of the Association.

1.45 The term Map shall mean and refer to the Final Plat.

1.46 The term MONTEBELLA shall mean and refer to the name of MONTEBELLA Subdivision

1.47 The term Mortgage shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Lot or any part thereof or interest therein is encumbered. A *First Mortgage* is a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.48 The term Mortgagee shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Developer as the holder of a First Mortgage of a Lot, or any interest therein.

1.49 The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Davis County, Utah.

1.50 The term Owner shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.51 The term Parking Pad shall mean and refer to a cement or concrete, (or other construction material approved in writing by the Architectural Review Committee) parking pad constructed or installed on a Lot for the purpose of parking or storing of a Recreational, Commercial, or Oversized Vehicle.

1.52 The term Parking Pad Fence shall mean and refer to the cinder block, vinyl or wood (or other construction material approved by the Architectural Review Committee in writing) fence surrounding the Parking Pad.

1.53 The term Period of Developer's Control shall mean and refer to the period of time during which the Class B Member is entitled to appoint a majority of the members of the Management Committee.

1.54 The term Permittee shall mean a tenant, resident occupant, visitor, guest, invitee or family member.

1.55 The term Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

1.56 The term Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.57 The term Plat Map shall mean and refer to the Final Plat.

1.58 The term Private Amenity shall mean and refer to certain real, personal or mixed property located adjacent to, in the vicinity of, or within the Property, which is privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis, or otherwise. Any property constituting a Lot, Lot, or Landscape Easements, as those terms are defined herein or on the Final Plat shall not be considered a Private Amenity.

1.59 The term Road or Street shall mean and refer to each road or street within the Subdivision. All Roads and Streets within the Subdivision shall be public. There are no private Roads or Streets within the Subdivision.

1.60 The term Project shall mean and refer to all of MONTEBELLA, as shown on the Plat unless the context clearly requires otherwise.

1.61 The term Project Documents shall mean and refer to this Declaration, the Final Plat, Bylaws, Rules and Regulations, and Articles of Incorporation of the Association.

1.62 The term Property shall mean and refer to all of the land or real estate, improvements and appurtenances comprising MONTEBELLA submitted to this Declaration.

1.63 The term Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

1.64 The term Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

1.65 The term Resident shall mean and refer to any person living or staying at MONTEBELLA. This includes but is not limited to natural person or persons residing in the Home.

1.66 The term Single Family shall mean and refer to *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

1.67 The term Single Family Residence shall mean and refer to (a) both the architectural style of a Home and the nature of the residential use permitted; and (b) a single family detached residence in MONTEBELLA as shown on the Final Plat.

1.68 The term Subdivision shall mean and refer to the residential subdivision known as MONTEBELLA and the Property.

1.69 The term Total Votes of the Association shall mean and refer to the total number of votes appertaining to all Lots in the Property and the Developer's votes.

1.70 The term Property shall mean and refer to all of the real estate submitted to this Declaration.

1.71 The term Use Restrictions shall mean and refer to the rules, regulations and use restrictions described with particularity below, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

1.72 The term Visible From a Neighboring Property shall mean with respect to any object, that such object is or would be visible to an individual 6' tall, standing at ground level on any portion of the neighboring property.



## II. SUBMISSION

The Property, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is hereby resubmitted to the Declaration.

The Property is hereby again made subject to, and shall be governed by the Declaration, and the covenants, conditions and restrictions set forth herein.

The Property is SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: This Declaration; all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plats or otherwise existing; an easement for each and every Landscape Easements improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Landscape Easements improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

## III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Description of Improvements. The significant improvements contained in MONTEBELLA include or will include up to twenty seven (27) Lots, numbered 1-27, inclusive, landscaping, landscaping easements, Flood Plane, Drainage Easement, Entry Easement, public road, and other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Final Plat.

a. Flood Plane and Drainage Easement. Regarding the Flood Plane and Drainage Easements within the Subdivision:

1) Certain Work and Improvements Prohibited. No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Flood Plane and/or Drainage Easement Areas or within the area 20 feet east of the Flood Plane and/or Drainage Easement Areas (as shown on the Final Plat), reduce its value or utility, or

impair any easement or hereditament. This includes by way of illustration but not limitation the construction, installation or placement of any Buildings, structures or improvements of any kind in the Flood Plane and Drainage Easement Areas or within the area 20 feet east of the Flood Plane and Drainage Easement Areas, or any change to the plane or alteration of established water flow and/or drainage patterns. In addition:

a) Lots 1-6. On Lots 1-6, inclusive, fencing must stop at and may not extend beyond or encroach upon the area 20 feet from the Flood Plane and Drainage Easement.

b) Lots 5 and 6. On Lots 5 and 6, no Building, structure or other improvement of any kind or nature whatsoever may extend beyond or encroach upon the said 20 feet easement area, as designated by the dashed line on the Final Plat.

2) Maintenance. The Davis County Flood Control or other governmental agency shall maintain the Flood Plane and Drainage Easement Area.

3) Amendment. Anything to the contrary notwithstanding, this subsection may not be modified without the express prior written consent of the City and Davis County Flood Control.

b. Landscape Easement and TREX/Masonry Wall. The Developer will construct a Landscape Easement or Easements along portions of the northern boundary of the Subdivision and a portion of Lot 27 as shown on the Final Plat. The Developer will also construct a 6 foot TREX/Masonry Wall<sup>1</sup> along State Road 273 as shown on the Final Plat (the "TREX/Masonry Wall"). The Association shall maintain the said Landscape Easement or Easements and the TREX/Masonry Wall.

c. Existing Petroleum (Gas Line) Easement. Two high pressure gas lines exist in the Subdivision adjoining by way of illustration but not limitation Lots 7, 8, 18, 19, 20, 2 and 3, and a portion of Rigby Road, as shown on the Final Plat (the "Existing Petroleum Easement Area"). The Existing Petroleum Easement Area extends 25 feet on both sides of the centerline of the high pressure gas lines, as shown on the Final Plat.

1) Certain Work and Improvements Prohibited. No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Existing Petroleum Easement Area or within 25 feet on both sides of the centerline of the high pressure gas lines as shown on the Final Plat, reduce its value or utility, or impair any easement or hereditament. This includes by way of illustration but not limitation any landscaping, trees, bushes, shrubs, planting beds, Buildings, structures, fencing or other improvements of any kind or nature without the prior express written consent of all three (3) of the Pipeline Companies (i.e., Plains Pipeline L.P. [(713) 646-4146], Rocky Mountain Pipeline System, LLC [(801) 292-0435] and ConocoPhillips [(801) 295-1192], and their successors and assigns) (collectively "Pipeline Companies"), which consent may be denied, conditioned or withheld.

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<sup>1</sup> Developer may change construction material

2) Maintenance. The Owners shall maintain the Exiting Petroleum Easement Area, subject to the rights and approval of the Pipeline Companies.

3) Indemnity. The Association shall defend, indemnify, and hold harmless the Association, any Owner, Guest, or Permittee, the Pipeline Companies, and Ivory Development, LLC, Ivory Homes Ltd. and their affiliates, agents, employees, officers, directors, insurers, successors and assigns from and against any loss, damage, claim, suit, liability, judgment, and expense (including attorneys' fees and other costs of litigation), and any fines, penalties, and assessments arising out of injury, disease, or death of persons (including that of the employees of the Pipeline Companies, Ivory Development, LLC, Ivory Homes Ltd. and their affiliates, or their contractors and subcontractors), damage to or loss of any property (including that of the Pipeline Companies, Ivory Development, LLC, Ivory Homes Ltd. and their affiliates or their resources, caused by, arising out of, or resulting from, either directly or indirectly, the activities of the Association, any Owner, Guest, or Permittee and their contractors or subcontractors in the construction, operation, and maintenance of Subdivision across the pipelines and associated rights-of-way of the Pipeline Companies.

4) Amendment. Anything to the contrary notwithstanding, this subsection may not be modified without the express prior written consent of the City and the Pipeline Companies.

d. Entryway. The Developer shall construct a 15' entryway easement on the land directly across from Lot 27 and Rigby Road (the "Entry Easement"). The Developer hereby grants and reserves to itself an access and maintenance easement and right of way over, across, under and through the Entry Easement for the purpose of maintaining the Entry Easement. The Association shall maintain the Entry Easement. If the Association fails to maintain the Entry Easement, and fails to remedy the default within thirty (30) days after delivery of written notice, the owner of said land may cure the default and bill the Association for the reasonable cost thereof, and the owner may file a lien against the Property to secure payment.

e. Other Easements for Public Utility and Drainage. Other Easements for public utility, landscaping and/or drainage are shown on the Final Plat. Unless otherwise noted, they are 10' wide on front, back and Subdivision boundaries, and 8' wide on each side of lot lines as indicated by dashed lines on the Final Plat.

2. Description of Property. The Final Plat shows the type and location of each Lot and its Lot Number.

3. Legal Status of the Property. All Lots shall be capable of being privately and independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

4. Membership in the Association and Voting Allocations. Membership in the Association is mandatory and may not be partitioned from the ownership of a Lot. Each Owner by virtue of accepting a deed or other document of conveyance to a Lot is deemed to be a member of the Association.

4.1 The Association shall have two classes of membership, Class A and Class B as follows:

4.1.1 Class A. Class A Members shall be all Owners with the exception of the Class B Members. Class A Members shall be entitled to vote on all issues before the Association. Each Class A Member shall have one (1) vote per Lot owned. No vote shall be cast or counted for any Lot not subject to assessment. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it. Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary of the Association at least three (3) days prior to any meeting.

4.1.2 The Class B Member shall be the Developer. Each Class B Member shall have three (3) votes per Lot owned. The rights of the Class B Member, including the right to approve actions taken under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class B Member shall be entitled to appoint a majority of the members of the Management Committee during the Class B Control Period. The Class B membership shall terminate and shall be converted to Class A membership upon the first to occur of the following: (a) December 31, 2016, or (b) when 100% of the Lots created have certificates of occupancy issued thereon and have been conveyed to Persons other than the Developer or builders holding title solely for purposes of development and sale, or (c) when, in its discretion, the Class B Member so determines.

5. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of Lot No \_\_\_\_\_ contained within MONTEBELLA, PHASE [ ], a Utah residential subdivision, as the same is identified in the Final Plat recorded in Davis County, Utah as Entry No. \_\_\_\_\_; \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Davis County, Utah (as said Final Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of MONTEBELLA, recorded in Davis County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Davis County, Utah (as said Declaration may have heretofore been supplemented), together with an ownership interest in the Association.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of the Project Documents shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor percentage of ownership interest in the Landscape Easements, shall be separated

from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association shall automatically accompany the transfer of the Lot to which they relate.

6. Mandatory Association. Each purchaser of a Lot by virtue of acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

7. Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by any Person. The Property shall be used only for residential purposes, except as expressly set forth below, and the Landscape Easements shall only be used in a manner consistent with the residential nature of MONTEBELLA.

8. Easements and Rights of Way. Developer hereby grants and conveys to the Association, each Owner and Permittee the right and non-exclusive easement to use and enjoy the Landscape Easements. Such rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (1) The right of the Association to limit the number of Guests and Permittees; (2) The right of the Association to suspend the voting privilege; and (3) The right of the Association to dedicate or transfer all or any part of the Landscape Easements to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. During the Developer's Period of Control, any such dedication or transfer shall be effective only if approved in writing by the Developer. Each Owner by virtue of acceptance of a deed or other document of conveyance shall be entitled to the exclusive ownership and possession of his Lot, and membership in the Association.

9. Joint or Common Utility Easements with Neighboring Subdivisions or Developments. The Developer for itself and/or its successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to owners or developers of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through MONTEBELLA.

10. Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative or house rules and regulations, which shall be binding upon all Owners, Guests and Permittees.

11. Reasonable Rights to Develop. No rule or action by the Association or Management Committee shall unreasonably impede Developer's right to develop the Property in accordance with the development approvals and Final Plat approved by the City, including, but not limited to, the rights of the Developer as set forth herein.

12. Rules and Rights of Owners. Except as may be specifically set forth below, and subject to City ordinances and the Declaration, whichever is more restrictive, neither the

Management Committee nor the Association may adopt any rule in violation of the following provisions:

12.1 Similar Treatment. Similarly situated Owners, Guests and Permittees shall be treated similarly.

12.2 Religious and Holiday Displays. The rights of Owners and Permittees to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in the Project shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

12.3 Household Composition. No rule shall interfere with the freedom of the occupants of Homes to determine the composition of their households, except that the Declaration limits residency in a Home to a single family and the Association shall have the power to limit the total number of occupants permitted in each Home on the basis of the size and facilities of the Home and its fair share use of the Landscape Easements.

12.4 Activities Within Lots. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create an unreasonable sounds of annoyance.

12.5 Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Landscape Easements to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Landscape Easements, from adopting generally applicable rules for use of Landscape Easements, or from denying use privileges to those who abuse the Landscape Easements, violate the Project Documents, or fail to pay Assessments. This provision does not affect the right of the Association to increase or decrease the amount of Assessments.

12.6 Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall apply to rules only; they shall not apply to amendments to this Declaration.

13. Initial Use Restrictions and Nature of MONTEBELLA. The Lots are subject to the following initial use restrictions which shall govern both the architecture and the activities within the Property:

13.1 Private Residence. No Lot (except as set forth below) shall be used except for residential purposes and all residents shall be obligated by the following requirements: No temporary structure including trailers, tents, shacks, garages, barns or other outbuildings shall be used on any Lot at any time.

13.2 Business Use. No resident may operate a commercial trade or business in or from his Lot with employees of any kind. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Lot. No commercial trade or business may be conducted in or from a Lot unless (a) the business activity conforms to all home occupation and zoning requirements governing MONTEBELLA; (b) the operator has a City issued business license; (c) the business activity satisfies the Home Occupation Guidelines adopted by the Management Committee, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the Management Committee. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

13.3 Storage and Parking of Vehicles. The driving, parking, standing, and storing of motor vehicles in, on or about the Property shall be subject to rules and regulations adopted by the Management Committee; provided, however, there shall be no outside storage or parking upon any Lot or the Common Elements of any automobile, Recreational, Commercial or Oversized vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other transportation divide of any kind, except for Owners within the parking spaces in the Owner's garage and for visitors temporarily parking in spaces and in accordance with rules and regulations designated and promulgated by the Management Committee. No Owners, Guests or Permittees shall repair or restore any vehicle of any kind upon any Lot or Common Elements, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally constructed. Parking in the Road or Street is regulated by the City. No Owner may park a motor vehicle or trailer in the "visitor" parking areas provided within the Project. Parking shall be allowed in driveways located in tandem with the garage as long as it complies with the above requirements. Due to the strict parking restrictions within the Subdivision, and subject to City conditions of approval for the development, sufficient space shall be retained in each garage to permit the parking of the intended number of vehicles therein.

13.4 Garbage and Refuse Disposal. No Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days. All garbage cans will be rolled to the public street for City pick-up.

13.5 Aerials, Antennas, and Satellite Systems. Satellite dishes, aerials, antenna, or systems may only be installed in accordance with FCC regulations taking into consideration any written guidelines established by the Architectural Review Committee. The Management

Committee may bar, in its sole discretion, satellite dishes, aerials, antenna, or systems, including HAM radio antenna, not expressly authorized by FCC regulations.

13.6 Animals and Pets. Large animals as that term is defined by City Ordinance are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Property. Up to two (2) domestic pets as that term is defined by City Ordinance per Lot are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts shall be considered a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) running loose throughout the Property and not in a cage or on a leash and under the control of a responsible person; (e) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.

13.7 Signs. No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot except for a single sign with a maximum size of 2' x 2' for specific purpose of advertising the sale of a Home; provided, however, this restriction does not apply to and is not binding upon the Developer, who may use whatever signs it deems appropriate to market its Lots. "For Rent" or "For Lease" signs on a Lot, in the Common Elements or showing from a Home are prohibited.

13.8 Zoning. All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property land use and buildings.

13.9 Nuisances. No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the other residents, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

13.10 Temporary Structures. No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other outbuilding shall be used on any Lot at any time as a residence.

13.11 Neighborhood. This Property is located by and is subject to the normal, everyday sounds, odors, and all other aspects associated with the nearby residential and commercial areas.

13.12 Owner-Occupied. A Home must be owner-occupied for a period of at least one (1) year immediately after closing. The term "owner-occupied" shall mean a Lot occupied by one of the following:



13.12.1 The vested owner (as shown on the records of the Davis County Recorder);

13.12.2 The vested owner and/or a spouse, children or siblings; or

13.12.3 The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50.0%) and/or a spouse, children or parents.

13.13 Laws. Nothing shall be done or kept in, on or about any Lot or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

13.14 Damage or Waste. Each Owner shall repair any damage he or she or any other residents, guests, or invitees of his Lot may cause to another Owner, Lot, or Home, and promptly restore the property to its original condition.

14. Transfer Fee. The Owner shall pay to the Association a five percent (5%) of the gross sales price on the Lot as a transfer fee if his Lot is sold (or if he or she enters into a written contract for the sale or conveyance of the Lot, including by way of illustration but not limitation a Real Estate Purchase Contract, Lease/Option, Deed or other similar Agreement or document of conveyance on the Lot) during the initial one (1) year period immediately after closing.

15. Architectural Review Committee. The Architectural Review Committee (the "ARC") shall have the right, power and authority to resolve all architectural, design and related issues. The Developer and upon the termination of the "Period of Developer's Control," the Management Committee has the sole right and exclusive authority to appoint all members of the ARC, subject to the Declaration. In the event of any conflict, incongruity or inconsistency between a decision of Developer (or at the termination of the Period of Developer's Control, the Management Committee) and the ARC, the former shall in all respects govern and control.

15.1 ARC Powers and Standing. Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

15.1.1 The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two (2) or more Owners; and

15.1.2 The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions.

15.2 Landscaping. All Lots shall be fully landscaped by the Lot Owner within nine (9) months of the date of the substantial completion of the construction of the Home. The Lot Owner shall be responsible to maintain the landscaping on his Lot in good condition and in accordance with the Design Guidelines, which are subject to change. Water-Wise Landscaping is encouraged throughout the community and is set forth in Exhibit "D" attached hereto and incorporated herein by this reference.

15.3 Home Plans and Styles. All of the homes built in the Subdivision shall be built from plans consisted with the Design Guidelines and must be approved by the Architectural Review Committee. The Ivory Homes Catalog of Homes as updated on an annual basis by Developer (collectively "Homes Catalog") shall be considered pre-approved by the Architectural Review Committee and totally compliant with the Design Guidelines.

15.4 Exterior Construction Materials and Elevations. The exterior construction materials of all homes within the Subdivision shall consist of a combination of brick and masonry (stucco) or rock and masonry (stucco) and/or other high quality exterior products expressly approved in writing by the Architectural Review Committee, provided they are consistent with the Homes Catalog. Anything to the contrary notwithstanding, no two homes with the same front elevation may be built side by side on abutting Lots.

15.5 Public roads. All roads in the Subdivision are public roads and shall be maintained by the City or other governmental agency.

15.6 Outdoor Lighting. The City shall provide all outdoor lighting (if any). The Developer shall not be required to install any private outdoor or street lighting.

15.7 Snow Removal. The Owners are responsible to remove all snow and ice accumulations from their Lots.

15.8 Easements. Easements and rights of way for the installation and maintenance of utilities, drainage systems and facilities, and irrigation are reserved, as set forth herein, the Final Plat, and in the legal descriptions of the Property.

15.8.1 Within these easements and rights-of-way, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on or about the easements and rights-of-way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights-of-way.

15.8.2 The easement and right of way area of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

15.9 Slope and Drainage Control. No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, the Flood Plane and Drainage Easements, the Existing

Petroleum Easements, Entry Easement or other utility easements, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels.

15.9.1 The slope control for each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible.

15.9.2 It shall be the responsibility of the Owner to see that his Lot strictly conforms with the grading and drainage plan established by the Developer, City and/or Davis County.

15.10 Procedures for Approval of Plans and Specifications. The ARC shall review and approve plans for all buildings proposed for erection, placement, or alteration within the Project. The City may require that building permit applications show evidence that the Architectural Control Committee has approved each building plan. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges, by acceptance of a deed or other document of conveyance, that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

15.11 No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

15.12 Variance. The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

15.13 Limitation of Liability. Neither the Developer nor the ARC, or any of their employees, agents, representatives or consultants shall be responsible in any way for any

defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Developer and the ARC, and their employees, agents, representatives or consultants, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

15.14 Professional Architects and Designers. Designs submitted for approval must be prepared by architects or by qualified residential designers of outstanding ability whose previous work must be available for inspection and evaluation as a part of the approval process.

15.15 Contractors. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the ARC from the Subdivision, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the ARC or the Developer, nor their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

15.16 Enforcement of Architectural Guidelines. Any construction, installation, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming.

15.16.1 Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work.

15.16.2 Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

15.17 Action Prohibited. No Owner by act or omission may do anything that might impair the integrity of or access to any utility easements, including by way of illustration but not limitation the Flood Plane, Drainage Easement, Existing Petroleum (gas lines) Easements, and Entry Easements.

16. Leases. No Owner shall be permitted to lease his Lot or Home for short term, transient, hotel, vacation, seasonal or corporate use purposes. For use in this Section "short term" shall be considered to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are expressly prohibited. No Owner may lease individual rooms to separate Persons or less than the entire Home, including by way of illustration but not limitation letting a room to domestic help or a caretaker, without the prior express written consent of the Management Committee. "For Rent" or "For Lease" signs are prohibited. The Management

Committee must approve in writing all lease and rental agreements as to form. Each Owner agrees by the acceptance of a deed or other document of conveyance to a Lot, that any such lease or rental agreement not approved or in violation of the Project Documents shall be considered "non-conforming" and voidable by the Management Committee. The Association may also require that Owners use lease forms or addenda, such as the Crime Free Addendum, approved by the Association (or include specific terms in their leases); and the Association may impose a review or administration fee on the lease or transfer of any Lot. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to his Lot or Home. Owners who elect to rent their Homes are required to pay to the Association an administration fee in a sum to be determined by the Management Committee. In addition, Owners who elect to rent their Home shall pay a security deposit in a sum to be determined by the Management Committee to protect the Community against any damages that a tenant may cause. Further, it is the responsibility of Owners who have tenants to properly educate those tenants about the governing documents and community rules that Owners as well as tenants are required to follow. Owners who are considering becoming a landlord should take a moment to contact the management office to discuss Association's policies and procedures on rentals.

17. Easement -- Support, Maintenance and Repair. There is hereby reserved and the Association is hereby granted a non-exclusive easement over, across, through, above and under the Lots for the purposes of enforcing the Project Documents.

18. Liability of Owners and Residents For Damages. Each Owner or Permittee shall be liable to the Association, or other Owners for damages to person or property in the Property caused by his intentional misconduct, recklessness, carelessness or negligence.

19. Encroachments. If any portion of Landscape Easements or a Lot encroaches or comes to encroach upon other Landscape Easements or another Lot as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

20. Management Committee. The Association shall be governed, directed and managed by a Management Committee comprised of three (3) natural persons who shall be duly qualified and elected (or appointed).

21. Status and General Authority of Management Committee. Any instrument executed by the Management Committee that recites facts which, if true, would establish the power and authority of the Management Committee to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs below, constitute a legal entity capable of dealing in its own name or in the name of the Management Committee. The Management Committee shall have, and is hereby granted, the following authority and powers:

21.1 Access. To enter into or upon any Lot to (1) make repairs to and to do other work necessary for the proper maintenance and operation of any Landscape Easements during reasonable hours and after reasonable notice to the occupant of the Lot; and (2) for making emergency repairs necessary to prevent damage to the Landscape Easements or to another Lot, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry.

21.2 Grant Easements. With or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Landscape Easements for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of MONTEBELLA.

21.3 Execute Documents. To execute and record, on behalf of all Owners, any amendment to the Declaration or Final Plat which has been approved by the vote or consent necessary to authorize such amendment.

21.4 Standing. To sue and be sued.

21.5 Enter Into Contracts. To enter into contracts which in any way concern MONTEBELLA, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

21.6 Transfer Interests in Real Property. To exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Members of the Association.

21.7 Purchase. To purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least sixty seven (67%) of the Members of the Association.

21.8 Add Property. To add any real property, or interest therein, obtained pursuant to subparagraph 21.7 above to MONTEBELLA, so long as it has been approved by at least sixty seven (67%) of the Members of the Association.

21.9 Promulgate Rules. To promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to ensure that MONTEBELLA is maintained and used in a manner consistent with this Declaration.

21.10 Meetings. To establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of meetings.

21.11 Delegation of Authority. To delegate its responsibilities over the management and control of MONTEBELLA to a professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

21.12 Interpret and Enforce Project Documents. To interpret and enforce this Declaration, the Bylaws, Rules and Regulations, and Articles of Incorporation.

21.13 Borrow. To borrow funds and pledge assets of the Association, so long as the transaction has been approved in advance by at least sixty seven (67%) of the Members of the Association.

21.14 All other Acts. To perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

22. Delegation of Management Responsibilities. The Property shall be managed by a professional manager, selected by the Developer or, upon the termination of the Period of Developer's Control, the Management Committee. The agreement for professional management of MONTEBELLA, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and no contract may be for an initial term greater than one (1) year.

23. Annual Meeting of the Association. The Association shall meet on a periodic basis at least annually at a time and place set by the Management Committee.

24. Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Management Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him ; (b) the name and address of each resident; (c) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (d) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Management Committee with written evidence verifying that the transfer has occurred, that the Deed or other instrument accomplishing the transfer is of record in the Office of the County Recorder, and that the transferee has received a copy of the Declaration and Bylaws then in force. The Management Committee may for all purposes act and rely on the information concerning ownership in its records or, at its option, the official records of the County Recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Management Committee is otherwise advised in writing.

25. Capital Improvements. All Common Expenses for Capital Improvements or Additions to the Project shall be governed by and subject to the following conditions, limitations and restrictions:

25.1 Management Committee Discretionary Expenditure Limit. Any Capital Improvement or Addition to the Project which costs ten percent (10%) or less of the Total Annual Budget for the Project, and does not alter the nature of the Project, may be authorized unilaterally by the Management Committee (the "Capital Improvement Expenditure Ceiling").

25.2 Expenditure Requiring Consent of Owners. Any Capital Improvement or Addition, the cost of which will exceed the Capital Improvement Expenditure Ceiling, must, prior to the commencement of construction, be authorized in writing by at least a majority of the Owners.

25.3 Improvements Changing the Nature of MONTEBELLA. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the Owners.

26. View Impairment. Neither the Developer nor the Association guarantees or represents that any view over and across any property, including any Lot or Building will be preserved without impairment. Neither the Developer nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

27. The Area of Common Responsibility. The Landscape Easements (including all landscaping) shall be the maintenance responsibility of the Association.

28. The Maintenance Responsibility of the Owners. Each Owner shall maintain, replace, and keep his Lot and any property privately owned in a state of good condition and repair.

29. Garbage Removal. Garbage service by the City will be limited to service from public streets only.

29.1 Owners shall place their garbage in suitable plastic bags, sacks or containers and deposit them immediately into the designated garbage containers.

29.2 Garbage containers shall be stored so as not to be visible from a neighboring property or the street except on garbage pick-up day each week and then for a period of no longer than twenty four (24) hours.

30. Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with Community Standards. If a dispute arises between a Owner or resident and the Association as to the condition of a Lot, the decision of the Management Committee shall be final, binding and conclusive.



31. Changes to Areas of Personal or Common Responsibility. The Management Committee may unilaterally add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Owners.

32. Developer's Rights to Change Design and Construction. The Developer may unilaterally make changes to the design and construction of the improvements located in or on the Property without the consent of the Management Committee or Owners.

33. Structural Alterations by Owner. No Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the non-Lot areas of MONTEBELLA, if any, without the prior written consent of the Management Committee.

34. Common Expenses. Each Owner by virtue of acceptance of a Deed or other document of conveyance to a Lot covenants to and shall pay his share of the Common Expenses, and Assessments, including Additional Charges, and Individual Charges to the Association in accordance with the Declaration

34.1 Developer. Anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments on any Lots owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Lots are sold or rented; or (3) Developer elects in writing to pay the Assessments, whichever first occurs.

34.2 Purpose of Common Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Management Committee.

34.3 Creation of Assessments. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Management Committee from time to time, each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed by the Management Committee.

34.4 Budget. At least thirty (30) days prior to the annual meeting of the Association, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

34.4.1 Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

34.4.2 Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Management Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, the cost of maintaining or repairing any of the Common Elements in the event an Owner defaults, wages for employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

34.5 Apportionment. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged equally to the Lot Owners.

34.6 Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

34.7 Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the Assessments are paid.

34.8 Additional Services. The Management Committee may, but is not obligated to, add to the Assessment of any particular Lot or Lot Owner additional charges for individual services offered or provided, not a Common Expense.

34.9 Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (a) the Owner of both the legal and equitable interest in any Lot; (b) the owner of record in the offices of the County Recorder of Davis County, Utah; and (c) both the Buyer and Seller under any executory sales contract or other similar instrument.

34.10 Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Management

Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

34.11 Dates and Manner of Payments. The dates and manner of payment shall be determined by the Management Committee.

34.12 Reserve Account. The Management Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.

34.13 Analysis Report. The Management Committee shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Association.

34.14 Acceleration. Assessments shall be paid in the manner and on dates fixed by the Management Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Management Committee otherwise decides acceleration is not in its best interest, the Management Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

34.15 Statement of Assessments Due. Upon written request, the Management Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

34.16 Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Lot hereby waives.

34.17 Suspension of Right to Vote for Non-Payment. At the discretion of the Management Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

34.18 Suspension of Right to Receive Utility Services. At the discretion of the Management Committee, the right of an Owner or Lot to receive utility services paid as a common expense may be suspended.

35. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

35.1 Management Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100th Dollars (\$500.00) per Lot in any one fiscal year (the "Special Assessment Limit"), the Management Committee may impose the special assessment without any additional approval.

35.2 Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Management Committee in its discretion may allow any special assessment to be paid in installments.

36. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

36.1 Benefit only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

36.2 Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Management Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Management Committee and shall not constitute a waiver of the Management Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Management Committee has not previously exercised its authority under this Section.

37. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10 day of the month in which they were due.

37.1 Delinquent Assessments. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Lot, regardless of whether a written notice is recorded.

37.2 Late Fees and Default Interest. A reasonable late fee may be charged by the Management Committee on all late payments. Default interest at a rate determined by the Management Committee shall accrue on the outstanding balance of any account.

37.3 Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the

Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing Lot or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

37.4 Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Management Committee, institute suit to collect the amounts due and/or to foreclose the lien.

37.5 Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

37.6 No Waiver. No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including but not limited to the abandonment of his Lot.

37.7 Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Management Committee to take some action or perform some function required to be taken or performed by the Association or Management Committee under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

37.8 Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and Current Assessments.

37.9 Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Management Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

37.10 Appointment of Trustee. If the Management Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby authorizes the Management Committee to execute and record a written Appointment of Trustee, appointing the attorney for the Association as the Trustee,

provided he or she is a member of the Utah State Bar, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

37.11 Appointment of Attorney in Fact to Collect Rents. Each Owner by virtue of his acceptance of a deed or other document of conveyance to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is more than thirty (30) days delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

37.12 Lenders, Foreclosures and Unpaid Assessments. Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorney fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including reasonable attorney fees, against the Lot for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

38. Liability of Management Committee. The Association shall indemnify every officer and member of the Management Committee against any and all expenses, including but not limited to attorneys fees reasonably incurred by or imposed upon any officer or member of the Management Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Management Committee) to which s/he may be a party by reason of being or having been an officer or member of the Management Committee. The officers and members of the Management Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct or bad faith. The officers and members of the Management Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Management Committee may also be Owners), and the Association shall indemnify and forever hold each such officer and member of the Management Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Management Committee, or former officer or member of the Management Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers and directors insurance coverage to fund this obligation, if such insurance is reasonably available.

39. Insurance. The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

39.1 Insurance Obligation of the Association. The Association shall obtain the following insurance coverage (collectively, "Association Master Policy"):

- 39.1.1 Public Liability. Public liability coverage for the Common Elements;
- 39.1.2 D&O. Directors and officers coverage; and
- 39.1.3 Fidelity Bond. A fidelity bond.
- 39.1.4 Petroleum Pipelines. Insurance covering the following indemnity:

The Association shall defend, indemnify, and hold harmless the Association, any Owner, Guest, or Permittee, the Pipeline Companies, and Ivory Development, LLC, Ivory Homes Ltd. and their affiliates, agents, employees, officers, directors, insurers, successors and assigns from and against any loss, damage, claim, suit, liability, judgment, and expense (including attorneys' fees and other costs of litigation), and any fines, penalties, and assessments arising out of injury, disease, or death of persons (including that of the employees of the Pipeline Companies, Ivory Development, LLC, Ivory Homes Ltd. and their affiliates, or their contractors and subcontractors), damage to or loss of any property (including that of the Pipeline Companies, Ivory Development, LLC, Ivory Homes Ltd. and their affiliates or their resources, caused by, arising out of, or resulting from, either directly or indirectly, the activities of the Association, any Owner, Guest, or Permittee and their contractors or subcontractors in the construction, operation, and maintenance of Subdivision across the pipelines and associated rights-of-way of the Pipeline Companies.

The Association Master Policy **DOES NOT** cover the Lots, Homes or the contents or the personal property in the Lot or belonging to the Owner or renter (as defined below), or personal liability. The Association **IS NOT REQUIRED** to cover property, fire or hazard insurance on a Lot or Home or loss of business, rents or rental income although it expressly reserves and is hereby granted the right to obtain such and other coverage for its benefit. Earthquake insurance is optional.

39.2 Minimum Amount of Insurance Coverage. The liability insurance purchased by the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate and optional umbrella liability coverage to be determined by

the Board of Directors from time to time for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Board of Directors.

39.3 Name Association as "Loss Payee" or "Additional Insured." Any insurance policy obtained independently by the Association, if any, shall name the Association as a certificate holder, additional insured and/or loss payee if applicable.

39.4 Premium a Common Expense. The premiums for the foregoing insurance coverage and the fidelity bond are to be considered a Common Expense.

39.5 Insurance Obligation of Owner. The foregoing obligation and right of the Association to purchase insurance coverage DOES NOT preclude the right or negate the obligation of each Owner to insure his own Lot, Home and the contents of his Lot or Home or other personal property belonging to an Owner for his benefit. **EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE** (collectively, "Lot Owner Policy"):

39.5.1 Public Liability Insurance. **PUBLIC LIABILITY COVERAGE FOR HIS LOT. THE LIMITS OF HIS PUBLIC LIABILITY INSURANCE POLICY SHALL BE IN AN AMOUNT NOT LESS THAN \$500,000.00 FOR BODILY INJURY, DEATH, AND PROPERTY DAMAGE.**

39.5.2 Coverage "A" Building (as that term is defined by the standard homeowners insurance policy) **A COVERAGE "A" BUILDING POLICY IN THE AMOUNT OF AT LEAST THE REPLACEMENT VALUE OF THE HOME;**

39.5.3 **EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPLACE HIS HOME AND/OR REPAIR ANY DAMAGE TO THE LOT. EACH OWNER IS ENCOURAGED TO SPEAK WITH AN INDEPENDENT INSURANCE AGENT BEFORE DETERMINING THE AMOUNT OF LOT OWNER POLICY.**

39.6 Changes in Amounts of Required Insurance. The amounts of insurance required may be increased or decreased unilaterally by the Board of Directors.

39.7 Coverage C (as that term is defined by the standard homeowners insurance policy) – Personal Property/ Contents and Lost Rents. **EACH OWNER IS RESPONSIBLE TO PURCHASE COVERAGE C – PERSONAL PROPERTY INSURANCE COVERING THE CONTENTS OF HIS LOT AND LOST BUSINESS, RENTS OR RENTAL INCOME.** For use herein the term "contents" shall mean and refer to in the broadest possible sense all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the original



design and specifications, and all personal property, belongings and effects in the Lot. Building or Landscape Easements not covered by the Master Association Policy.

39.8 Premium Is An Individual Expense. The insurance premium on the Lot Owner Policy shall be an Individual Expense.

39.9 Maintenance of Coverage. The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

39.10 Not a Limitation. The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as s/he may deem appropriate.

39.11 Name Association as "Additional Insured." Each Lot Owner Policy shall name the Association as an "Additional Insured."

39.11.1 Certificate of Insurance. Each Owner shall provide the Association with a "Certificate of Insurance" upon request.

39.12 Owner's Default. If a Lot Owner fails to obtain a Lot Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may, but is not obligated to, purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if a Lot Owner fails to obtain the required Lot Owner Policy, then s/he shall be personally responsible to pay any deductible on the Master Association Policy as well as any and all costs, up to the minimum amount of coverage, incurred for repairs of or to the building as defined above.

39.13 Damages. Each Lot Owner is responsible for the maintenance of his Lot and for the repair of any damage s/he causes to another Lot or the Landscape Easements.

39.14 Validity of Document. If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

39.15 Right to Adjust Claims. The Association has the right, power and authority to adjust claims.

39.16 Use of Insurance Proceeds and Repairs. Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

39.17 Quality of Insurance Company. The Association and Lot Owners shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

39.19 Primary Coverage. It is the intent of the Developer that in the event a claim is covered by both the Association Master Policy and the Lot Owner Policy, that the Lot Owner Policy provide **PRIMARY** coverage and that the Association Master Policy provide **SECONDARY** coverage.

40. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of MONTEBELLA.

40.1 Definitions. Each of the following terms shall have the meaning indicated:

40.1.1 "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to MONTEBELLA or any part thereof, the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) percent or more of the estimated restored value of MONTEBELLA.

40.1.2 "Partial Destruction" shall mean any other damage or destruction to MONTEBELLA or any part thereof.

40.1.3 "Substantial Condemnation" shall exist whenever a complete taking of MONTEBELLA or a taking of part of MONTEBELLA has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is twenty five (25%) percent or more of the estimated restored value of MONTEBELLA.

40.1.4 "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

40.1.5 "Substantial Obsolescence" shall exist whenever MONTEBELLA or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) percent or more of the estimated restored value of MONTEBELLA.

40.1.6 "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

40.1.7 "Restored Value" shall mean the fair market value of MONTEBELLA after Restoration as determined by an MAI or other qualified appraisal.

40.1.8 "Estimated Cost of Restoration" shall mean the estimated costs of restoring MONTEBELLA to its former condition.

40.1.9 "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

40.2 Determination by Management Committee. Upon the occurrence of any damage or destruction to MONTEBELLA or any part thereof, or upon a complete or partial taking of MONTEBELLA under eminent domain or by grant or conveyance in lieu thereof, the Management Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of MONTEBELLA. In addition, the Management Committee shall, from time to time, review the condition of MONTEBELLA to determine whether Substantial Obsolescence exists. In making such determinations the Management Committee may retain and rely upon one or more qualified appraisers or other professionals.

40.3 Restoration of MONTEBELLA. Restoration of MONTEBELLA shall be undertaken by the Management Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Lots and is further consented to by Eligible Mortgagees holding Mortgages on at least fifty-one (51%) percent of the Lots subject to Mortgages held by Eligible Mortgagees.

40.4 Notices of Destruction or Obsolescence. Within thirty (30) days after the Management Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

40.5 Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Management Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective ownership interest in the Association. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

40.6 Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

40.7 Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though MONTEBELLA will continue as a residential subdivision) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the ownership interest in the Association shall be immediately reallocated to the remaining Lots.

40.8 Sale of MONTEBELLA. Unless Restoration is accomplished as set forth above, MONTEBELLA shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Final Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Management Committee to the Owners in proportion to their ownership interest in the Association. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

40.9 Authority of Management Committee to Represent Owners in Condemnation or to Restore or Sell. The Management Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Landscape Easements.

40.10 Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

40.11 Restoration Power. The Management Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell MONTEBELLA and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

40.12 Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

40.13 Termination of Legal Status. Any action to terminate the legal status of the Property after Substantial Destruction or Condemnation occurs shall be agreed to by Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association, by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Lots that are subject to mortgages held by eligible holders, sixty-seven (67%) of all of the Lot and Lot Owners in the Property, and the Developer until the expiration of the Period of Developer's Control.

The termination of the legal status of MONTEBELLA for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Lots. However, implied approval may be assumed when an Eligible Mortgage holder fails to submit a response

to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

41. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Lots which collectively hold the required percentages, subject to the following conditions:

41.1 Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

41.2 Change In Ownership. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

42. Mortgagee Protection. The lien or claim against a Lot for unpaid Assessments levied pursuant to the Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

42.1 Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available there under shall extinguish any debt due more than six (6) months prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

42.2 Books and Records Available for Inspection. The Management, Management Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative rules and regulations concerning MONTEBELLA, as well as the books, records, and financial statements of the Management Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

42.3 Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

42.4 Eligible Mortgagee Designation. Upon written request to the Association or Management Committee by the holder, insurer, or guarantor of a Mortgage (which request

identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

42.4.1 Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of MONTEBELLA or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

42.4.2 Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

42.4.3 Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Management Committee or the Association.

42.4.4 Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

43. Amendment.

43.1 General. Except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Association. In such instrument an officer or delegate of the Association shall certify that the vote required by this Section for Amendment has occurred.

43.2 Initial Developer Right to Amend. The Developer alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot .

43.3 Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Developer if such Amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing.

43.4 Developer's Right to Amend Unilaterally Prior to Termination of Developer's Right to Control. Prior to the expiration of the Period of Developer's Control, Developer may unilaterally amend this Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner or Member hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner or Member.

43.5 To Satisfy Requirements of Lenders. Notwithstanding anything to the contrary, Developer reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Developer of an Amendment duly signed by the Developer, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and Memberships and all persons having an interest therein. It is the desire of Developer to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Developer, Developer shall have the unilateral right to amend this Declaration to restore such control.

43.6 Developer's Rights. No provision of this Declaration reserving or granting to Developer the Developmental Rights shall be amended without the prior express written consent of Developer, which consent may be withheld, conditioned or delayed for any reason or for no reason at Developer's sole and exclusive discretion.

44. Developer's Sales Program. Anything to the contrary notwithstanding, for so long as Developer continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Developer from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Developer in accordance with the Declaration. Until the Developer has sold all of its Lots in the Property, neither the Owners, the Association nor the Management Committee shall interfere with the completion of improvements and sale of all remaining Lots, and Developer shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Developer:

44.1 Sales Office and Model Homes. Developer shall have the right to maintain one (1) or more sales offices and one (1) or more model Homes at any one time. Such office and/or models may be one or more of the Lots owned by the Developer, one or more

separate structures or facilities placed on the Property for the purpose of aiding Developer's sales effort, or any combination of the foregoing;

44.2 Promotional. Developer shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

44.3 Use of Landscape Easements. Developer shall have the right to use the Landscape Easements located in MONTEBELLA.

44.4 Relocation and Removal. Developer shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Until one hundred and twenty (120) days after the date of closing of Developer's last Lot in MONTEBELLA, Developer shall have the right to remove from MONTEBELLA any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Developer's sales effort.

45. Limitation on Improvements by Association. Until one hundred and twenty (120) days after the date of the closing of the sale of Developer's last Lot or Home in the Property, neither the Association nor the Management Committee shall, without the written consent of Developer, make any improvement to or alteration in any of the Landscape Easements created or constructed by Developer, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Landscape Easements as originally created or constructed by Developer.

46. Developer's Rights Assignable. All of the rights of Developer under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in MONTEBELLA title to which is vested in Developer shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Developer (in its capacity as Developer) herein.

47. Combination of Lots. An Owner of two or more adjoining Lots shall have the right upon approval of the Management Committee, City, and the mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the declaration and map to reflect such combination.

47.1 Such amendments may be accomplished by the Owner recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered Lots as required in the initial declaration and map with respect to the initial Lots. All costs and expenses required in such amendments shall be borne by the Owner desiring such combination.



47.2 All such amendments to the Declaration and Final Plat must be approved by City and attorneys employed by the Management Committee to ensure the continuing legality of the Declaration and the Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

47.3 Any amendments of the Declaration or Final Plat pursuant to this Section shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of ownership interest in the Association which are appurtenant to the Lots involved in the alterations. The percentage of ownership interest in the Association and facilities appurtenant to all other Lots shall not be changed. All such amendments must, in all instances, be consented to by the Management Committee and also all other persons holding interest in the Lots affected. The consent of other Owners need not be obtained to make such amendments or alterations valid, providing the percentages of ownership interest in the Association of the other Owners remain unchanged.

48. Alterations to the Landscape Easements. Anything to the contrary notwithstanding and until the termination of the Period of Developer's Control, the Developer may create and/or make changes to the Landscape Easements without the consent of either the Association or the Management Committee; provided, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Landscape Easements including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures not shown on the approved plans and specifications, without the prior written consent of the Management Committee.

49. Transfer of Management. Anything to the contrary notwithstanding, Developer may at any time relinquish its reserved right (as a Class B Member) to select the Members of the Management Committee and may elect to transfer the management of MONTEBELLA to a Management Committee elected by the Owners. Upon the termination of the Period of Developer's Control, Developer shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date; provided, however, Developer may appoint up to one member of the Management Committee until the year 2056. Developer covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Developer shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Management Committee.

50. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders.

51. Severance. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. If any covenant, condition, restriction, part, term or provision of this Declaration is deemed to be inconsistent, incongruent or in conflict with (the "Inconsistent Provision") any condominium approval guidelines of the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, 36.4357(b)(4) for the financing, insuring or the guaranty of the Property, or any part thereof (the "Required Provision"), then (a) the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain such Inconsistent Provision, and (b) the Required Provision shall be and is hereby incorporated herein by this reference, anything to the contrary notwithstanding.

52. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in MONTEBELLA, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in MONTEBELLA, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

53. Enforcement and Right to Recover Attorneys Fees.

53.1 General Remedies. Should the Association, Management Committee or an aggrieved Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

53.2 Additional Remedies. In addition, the Management Committee may impose the following sanctions after proper notice and the opportunity to be heard:

53.2.1 imposing Individual Charges and fines, which may be secured by a lien against the Owner's interest in the Property;

53.2.2 suspending an Owner's right to vote;

53.2.3 exercising self-help or taking action to abate any violation of MONTEBELLA Documents in a non-emergency situation;

53.2.4 exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);

53.2.5 requiring an Owner at his sole expense to remove any structure or improvement in the Landscape Easements, Flood Plane, Drainage Easement, Entry Easement or Existing Petroleum Easement, and upon the failure of the Owner to do so, the Management

Committee or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;

53.2.6 without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

53.2.7 levying Individual Charges to cover costs and expenses incurred by the Association to bring an Owner into compliance.

54. Agreement to Share Costs. The Developer or the Association may enter into a contract or agreement, which includes a Covenant to Share Costs, for the use of facilities or the procurement of services for the benefit of the Association, and the present and future Owners which obligates the Association and such Owners to share the costs of maintaining and/or operating the same.

55. Expansion of the Project.

55.1 Reservation of Option to Expand. Developer hereby reserves the option to expand the Project to annex additional property and/or include additional Lots in the Project (the "Additional Land"). This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire ten (10) years from the date following the first conveyance of a Lot in Phase I to a Lot purchaser unless sooner terminated by Developer's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said ten (10) years. Such right may be exercised without first obtaining the consent or vote of Lot Owners and shall be limited only as herein specifically provided. Such Lots shall be constructed on any or all portions of the Additional Property.

55.2 Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Developer in the office of the County Recorder of Davis County, Utah, no later than ten (10) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Map or Maps containing the same information with respect to the new Lots as was required on the Map with respect to the Phase I Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

55.3 Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the County Recorder of a Supplemental Map incident to

any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots in the Project as it existed before such expansion the respective ownership interests in the Association as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Project as it existed, a corresponding ownership interest in the Association as a result of such expansion.

55.4 Declaration Operative on New Lots. The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to the Project Documents, together with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the County Recorder.

55.5 Right of Developer to Adjust Ownership Interests in Association. Each deed of a Lot shall be deemed to irrevocably reserve to the Developer the power to appoint to Lot Owners, from time to time, a corresponding ownership interest in the Association. The ownership interest of each Lot Owner in the Association after any expansion of the Project shall be an ownership interest in the Association as the Project has been expanded. A power coupled with an interest is hereby granted to the Developer, its successors and assigns, as attorney in fact to shift ownership interests in the Association in accordance with Supplemental or Declarations recorded pursuant hereto and each deed of a Lot in the Project shall be deemed a grant of such power to the Developer. Various provisions of this Declaration and deeds and mortgages of the Lots may contain clauses designed to accomplish a shifting of the ownership interest in the Association. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the ownership interest in the Association can be accomplished. Notwithstanding anything to the contrary herein, no change in the ownership interest in the Association may be effected more than five (5) years after the effective date of the Declaration without the express prior written consent of at least two-thirds of the Owners.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of ownership interests in the Association shall automatically become effective for all purposes and shall fully supersede any previous schedule associated with any prior phase.

55.6 Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

55.6.1 All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Lots created must be restricted to multi-family residential housing limited to one family per Lot.

55.6.2 Portions of the Additional Land may be added to the Project at different times without any limitations.

55.6.3 Developer shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Map. The Association of Lot Owners shall not allow anything to be built upon or interfere with said easement areas.

55.6.4 No assurances are made concerning:

55.6.4.1. The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

55.6.4.2 Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Lots will be comparable to the Phase I facilities on a per Lot basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

55.6.4.3 Whether any Lots created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Lots will be constructed of an equal or better quality of materials and construction than the Lots in Phase I.

55.6.4.4 Type, size, or maximum number of Limited Common Elements which may be created within any portion of the Additional Land added to the Project.

55.6.5 Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Developer any obligation respecting, or to restrict Developer in any way with regard to: (a) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration; (b) the creation, construction, or addition to the Project of any additional property; (c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

567. Agent for Service of Process. The President of the Association is the person to receive service of process. The initial Registered Agent is Christopher P. Gamvroulas and the initial office of the Registered Agent is 978 East Woodoak Lane, Salt Lake City, Utah 84117.

57. Term. This Declaration shall continue perpetually unless sooner terminated by the unanimous written consent of all Owners.

58. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Final Plat shall take effect upon its being filed for record in the Office of the County Recorder.

EXECUTED the 6 day of June, 2008.

DEVELOPER:  
IVORY DEVELOPMENT, LLC.

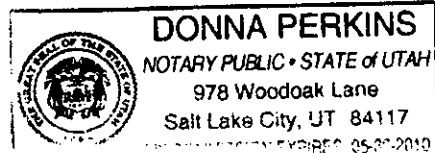
By: *Christopher P. Gamvroulas*  
Name: Christopher P. Gamvroulas  
Title: Managing Member

**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  ss:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 6 day June, 2008 by Christopher P. Gamvroulas, the Managing Member of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.

*Donna Perkins*  
NOTARY PUBLIC  
Residing at: *Salt Lake*  
My Commission Expires: *5/30/2010*



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**MONTEBELLA**

The land referred to in the foregoing document as MONTEBELLA is located in Davis County, Utah and more particularly described as follows:

A part of the Northeast Quarter of Section 11, Township 3 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the Southwesterly right-of-way line of State Road 273 (U.S. Highway 91A) said point being 1565.92 feet South 89°51'06" West along the Section line and South 0°08'54" East 511.49 feet from the Northeast corner of said Quarter Section; and running thence two (2) courses along said Southwesterly right-of-way as follows: South 37°12'30" East 48.07 feet and South 42°55'08" East 437.48 feet; thence South 47°15'00" West 130.08 feet; thence South 39°48'31" East 184.98 feet; thence South 89°39'00" East 192.31 feet to said Southwesterly right-of-way line; thence Southeasterly along the arc of a 2814.90 foot radius curve to the right a distance of 59.77 feet (Long Chord bears South 41°52'07" East 59.77 feet); thence South 50°06'42" West 191.19 feet; thence North 43°25'14" West 88.02 feet; thence Southwesterly along the arc of a 50.00 foot radius curve to the right a distance of 30.47 feet (Long Chord bears South 46°34'46" West 30.00 feet; thence South 43°25'14" East 117.42 feet); thence South 17°06'00" East 13.65 feet; thence South 89°38'58" West 192.55 feet; thence North 0°00'24" West 24.94 feet; thence North 89°39'00" West 845.11 feet to the East line of Oak View Subdivision, Kaysville City, Davis County, Utah as occupied on the ground; thence North 8°37'01" East 524.23 feet along said East line and the East line of Oak View Subdivision Amended, Kaysville City, Davis County, Utah as occupied on the ground and the East line of Edge End Hollow Subdivision No. 1, Kaysville City, Davis County, Utah as occupied on the ground; thence North 23°24'01" East 203.57 feet along said East line of said Edge End Hollow Subdivision No. 1 and said line extended; thence North 40°58'01" East 214.63 feet; thence South 29°52'50" East 179.29 feet; thence South 52°35'40" East 96.00 feet; thence Northeasterly along the arc of a 299.47 foot radius curve to the right a distance of 51.46 (Long Chord bears North 42°44'57" East 51.40 feet); thence North 47°15'03" East 135.55 feet to the point of beginning.

Contains 14.400 Acres

**EXHIBIT "B"**  
**BYLAWS**  
**OF**  
**MONTEBELLA ASSOCIATION**

**ARTICLE I**  
**NAME AND LOCATION**

**Section 1 .01 Name and Location.** The name of the association is MONTEBELLA Association (the "Association"). The principal office of the corporation shall be located at 978 East Woodoak Lane, Salt Lake City, UT 84117, but meetings of Members and Management Committee may be held at such places within the State of Utah, as may be designated by Management Committee.

**ARTICLE II**  
**DEFINITIONS**

**Section 2.01 Definitions.** Except as otherwise provided herein or as may be required by context, all terms defined in Section 1 of the Declaration shall have such defined meanings when used in these Bylaws.

**ARTICLE III**  
**MEETINGS OF MEMBERS OF THE ASSOCIATION**

**Section 3.01 Annual Meeting.** The Management Committee shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

**Section 3.02 Special Meetings.** Special meetings of the Members of the Association may be called at any time by the President or by a majority of the Members of the Management Committee.

**Section 3.03 Notice of Meetings.** Written notice of each meeting of the Association shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 3.04 Quorum.** A majority of the Owners present shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If a quorum is not present, then the meeting may be adjourned for at least twenty four (24) hours and no more than seven (7) days and those Owners present at the reconvened



meeting shall constitute a quorum. Oral notice of the adjournment and of the date, time and place of the reconvening shall be sufficient. No written notice of such meeting shall be required.

**Section 3.05 Proxies.** At all Association meetings, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall expire, if not previously revoked, eleven (11) months after the date it is given by the Owner.

#### **ARTICLE IV MANAGEMENT COMMITTEE AND TERM OF OFFICE**

**Section 4.01 Number.** The affairs of the Association shall be managed by a Management Committee comprised of three (3) natural persons. Each Member must be duly qualified and appointed or elected.

**Section 4.02 Replacement.** If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete his term of office.

**Section 4.03 Term of Office.** Each Member on the Management Committee shall serve a term of at least one (1) year.

**Section 4.04 Compensation.** No Member shall receive compensation for any service rendered to the Association as a member of the Management Committee, although he or she may be reimbursed for actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Association to provide additional services for a fee.

**Section 4.05 Action Taken Without a Meeting.** The Management Committee shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Members. Any action so approved shall have the same effect as though taken at a meeting of the Management Committee.

**Section 4.06 Voting.** Each Member shall have one vote.

**Section 4.07 Managing Member.** Anything to the contrary notwithstanding, during the Period of Developer's Control, the Management Committee hereby assigns and delegates all of its rights, power and authority, as set forth in the Project Documents, to a Managing Member selected or to be selected by the Developer, who shall manage the Common Elements and administer the Project Documents for and in behalf of the Association and the Architectural Review Committee. The Developer hereby designates Christopher P. Gamvroulas as the initial Managing Member of the Association.

**ARTICLE V  
POWERS AND DUTIES OF THE MANAGEMENT COMMITTEE**

**Section 5.03 Powers.** The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing, the Association may act through its Management Committee and shall specifically have the powers and duties set out in this Article V, including

**Section 5.03.1 Assessments.** The power and duty to levy Assessments on the Owners, and to enforce payment of such assessments in accordance with the Declaration.

**Section 5.03.2 Association Property.** The right to own and/or lease the Association property and the duty to manage, control and regulate the Common Elements and improvements thereon. In particular the Association shall:

- a. Assure the maintenance of the Common Elements in an attractive, safe and functional condition;
- b. Pay any taxes or other assessments on the Common Elements (if any) which are the responsibility of the Association;
- c. Do each and every other thing reasonable and necessary to manage the Common Elements and the Association.

**ARTICLE VI  
OFFICERS AND THEIR DUTIES**

**Section 6.01 Enumeration of Officers.** The officers of the Association shall be a president and secretary, plus such other officers as the Management Committee may from time to time by resolution create. The same individual may not hold the office of president and secretary at the same time. The officers need not be Members of the Management Committee.

**Section 6.02 Election of Officers.** The Management Committee shall elect or appoint officers at the first meeting of the Management Committee during each calendar year.

**Section 6.03 Term.** Each officer of the Association shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed or otherwise disqualified to serve.

**Section 6.04 Special Appointments.** The Management Committee may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine.

**Section 6.05 Resignation and Removal.** Any officer may be removed from office with or without cause by a majority vote of the Management Committee. Any officer may resign at any time by giving written notice to the Management Committee, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6.06 Vacancies.** A vacancy in any office may be filled by appointment by the Management Committee. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

**Section 6.07 President.** The president shall (a) preside at all meetings of the Management Committee, (b) see that orders and resolutions of the Management Committee are carried out and (c) sign all contracts.

**Section 6.08 Secretary.** The secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Management Committee and of the Association, (b) keep the corporate seal of the Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Management Committee and of the Association, (d) keep appropriate current record showing the Members of the Association together with their addresses, and (e) perform such other duties as may be required by the Management Committee.

## **ARTICLE VII ARCHITECTURAL REVIEW AND OTHER COMMITTEES**

**Section 7.01 Architectural Review Committees.** The Architectural Review Committee shall consist of at least one (1) and no more than nine (9) members. The members of the Architectural Review Committee shall be appointed by the Developer during the Period of Developer's Control. The initial members of the Architectural Review Committee, who shall serve until their successors are appointed, are Christopher P. Gamvroulas, Steven Palmer and Eric Freebairn. During the Period of Developer's Control, the Architectural Review Committee assigns and delegates all of its rights, power and authority to a Managing Member selected by the Developer, who shall manage the Architectural Review Committee and administer the Project Documents. The initial Managing Member of the Association shall be Christopher P. Gamvroulas.

**Section 7.02 Other Committees.** Management Committee may appoint such committees as deemed appropriate in carrying out its purpose.

**ARTICLE VIII  
BOOKS AND RECORDS**

**Section 8.01 Books and Records.** The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Property, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Management Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

**Section 8.02 Signatures.** All checks, drafts, contracts, and legally binding agreements must be signed by at least two (2) persons, one of whom must be the president or secretary, and the other the professional property manager.

**Section 8.03 Bookkeeping.** The accounting and financial statements for Association must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be a member of the Management Committee or an officer of the Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered designee by the bookkeeper or accountant to each Member and Association or their designee. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

**Section 8.04 Audit.** Either a (a) majority vote of the Members of the Management Committee or (b) majority vote of all of the Owners is necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Association.

**ARTICLE IX  
AMENDMENTS**

**Section 9.01 Amendment to Bylaws.** These Bylaws may be amended either (a) unilaterally by the Developer until the expiration of the Period of Developer's Control, (b) the affirmative vote of a majority of the Owners, or (c) by the Board of Directors.

**Section 9.02 Conflict Between Articles, Bylaws and Declaration.** In the case of any conflict between the Declaration and these Bylaws, the Declaration shall in all respects govern and control.



**EXHIBIT "C"**  
**DESIGN GUIDELINES**

1. **Designs, Plans and Specifications.** Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval. Information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction should be submitted if applicable. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

2. **Review Considerations Generally.** In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things.

3. **Aesthetics.** Decisions of the ARC may be based on purely aesthetic considerations and to maintain the integrity of the Developer's original design scheme. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

4. **Minimum Home Requirements.** No Home shall be constructed or altered unless it meets the following minimum requirements:

a) Only single family residential Homes are allowed.

b) The height of any Home or other structure shall not exceed two stories above ground.

c) No slab on grade Homes are permitted.

d) Without the prior written consent of the ARC, a basement is required for each Home.

e) Without the prior written consent of the ARC, each Home shall have a private garage for not less than three motor vehicles.

f) The Home exteriors, in their entirety, must consist of either maintenance free stucco and masonry, unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted.

g) Any detached Accessory Building must conform in design and materials with the Home.

h) Any and all plans and specifications for an Accessory Building must be submitted, reviewed and approved in writing in advance.

5. **Landscaping.** All Lots shall be fully landscaped within nine (9) months after the date of the substantial completion of the construction of the Home. All Lot landscaping, grading, and drainage is subject to the following requirements.

a) Landscaping shall include by way of illustration but not limitation the planting of a lawn and/or other appropriate ground cover, planting beds and flower beds, appropriate bushes and shrubs, and the planting of trees in accordance with the Street Tree Planting Plan, a copy of which is attached hereto, marked Exhibit "D" and incorporated herein by this reference.

b) The Developer or Builder will provide the City with a bond for landscaping whenever possible.

c) In the event that such a bond is provided, it shall be refunded, upon the buyer's completion of the City's landscaping requirements, inspection and approval, to the Owner.

d) By accepting a deed or other document of conveyance to a Lot, the Owner hereby agrees, acknowledges and consents that if the Developer is required by the City to install front yard landscaping prior to receiving a final inspection on the Lot, to the basic front yard landscaping so provided and further agrees that the landscaping installed by Developer is in lieu of, abrogates and cancels any 2,000 sq. ft. of sod promised on any promotional materials, including by way of illustration but not limitation the Purchase Price Addendum and the Ivory Homes Catalogue of Homes.

e) The Owner is responsible for the initial planting of trees.

f) Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained and replaced by the Owner.

g) Any weeds or diseased or dead lawn, trees, ground cover, bushes or shrubs shall be removed and replaced.

h) All replacement trees must also satisfy the requirements of the Street Tree Planting Plan.

i) The landscaping of a Lot may not adversely affect the value or use of any other property or detract from the original design scheme and appearance of the subdivision.

j) No concrete, cement or masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rocks, pebbles, gravel, permeable pavements and so forth or other artificial or impermeable surfaces (collectively "controlled surfaces") may be installed or constructed as landscaping in the front, side or rear yards of a Lot without the express prior written consent of the ARC.

k) Front, side or rear yards constructed primarily or substantially of controlled surfaces are prohibited.

6. **Fencing.** Except for the TREX/Masonry Wall, no fencing is allowed in the Subdivision without the express prior written consent of the ARC, which may be withheld, conditioned or delayed. No fence or similar structure shall be placed in any front yard. No fence or similar structure shall be placed in any side or rear yard in excess of six (6) feet. Vinyl, wood, masonry and wrought iron fencing may be allowed, although a request for approval may be denied. Chain link fencing is strictly prohibited. If there is a dispute as to what constitutes the front, side or rear yards, or whether a variance has been granted, the decision of the ARC shall be final, binding and conclusive.

7. **Recreational Amenities.** Swimming pools, hot tubs, athletic courts, tennis courts, basketball court, soccer pitch, batting cages, and other recreational amenities require the prior express written consent of the ARC.

8. **Preliminary Architectural Drawings, Plans and Specifications** The ARC may require the following preliminary items:

a) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.

b) Floor plans of each floor level to scale.

c) Elevations to scale of all sides of the Home.

- d) One major section through Home.
- e) A perspective.
- f) Any other documentation it considers necessary or appropriate.
- g) Specifications of all outside materials to be used on the exterior of the Home.

9. **Final Plans and Specifications and Working Drawings.** The ARC may require the following final items:

a) Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

b) Detailed floor plans.

c) Detailed elevations, indicating all materials and showing existing and finished grades.

d) Detailed sections, cross and longitudinal.

e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Home.

10. **Easements.** An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights-of-way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights-of-way. If a drainage channel is altered by an Owner, the Developer and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his sole expense, excepting those improvements for which a public authority or utility company is expressly responsible.

11. **Slope and Drainage Control.** No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels.

a) The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible.

b) It shall be the responsibility of the Owner to see that his Lot strictly conforms with the grading and drainage plan established by the Developer, Davis County and the City.

12. **Accessory Buildings.** Accessory Buildings are subject to the following guidelines:



a) Any detached Accessory Building must conform in design and construction materials with the primary residential Home;

b) Generally the maximum height of an Accessory Building shall be 12 feet, although the ARC may grant an exception if, in its sole opinion, such is in the best interest of the Project for use as a detached garage, to house a recreational vehicle, or other purpose;

c) Tin sheds are not allowed; and

d) If there is a dispute of any kind whatsoever, such as whether a structure is an Accessory Building, the decision of the Developer or upon the termination of the Period of Developer's Control the Management Committee shall be final, conclusive and binding.

13. **Conflict.** In the event of any conflict, inconsistency or incongruity between the provisions of the Design Guidelines and the Declaration, the latter shall in all respects govern and control.

